



## DAYCO GLOBAL TERMS AND CONDITIONS OF PURCHASE

### A. Parties, Items

1. Parties: Dayco Products, LLC or any of its affiliates, subsidiaries or divisions referenced on the purchase order that incorporates these terms and conditions of purchase (the “Order”) is referred to as “Purchaser.” The person or company indicated on the Order, with whom the Order is placed, is referred to as “Seller.”
2. Items: All products, materials, goods, services, supplies, or work covered by the Order, regardless of type, are referred to as “Items.”
3. Except as specifically modified in the applicable country specific Addendum (individually each a “Country Specific Addendum” and collectively “Country Specific Addendums”), these Global Terms and Conditions of Purchase (“Global Terms”) apply to, and are part of, all purchase orders issued by Purchaser.

### B. Quantity, Price

1. Quantity: If the quantity of Items to be purchased is specified on the Order, the Order is not enforceable beyond the quantity of Items shown on the front of the Order. If the quantity of Items to be purchased is not specified on the Order, then the quantity is for Purchaser’s requirements and the Purchaser will, by a written or electronic authorization (a “release”), communicate to the Seller, from time to time, the quantity of the Items to be purchased and the due dates for delivery of such Items.
2. Price: Seller warrants the price of the Items shall be the lowest price at which these or similar Items are sold to other customers in similar quantities or the last price charged or quoted to Purchaser, whichever price is lower. If, during the period that the Order is in effect, Seller reduces the price at which these or similar Items are sold to customers other than Purchaser, the price for any Items delivered to Purchaser after the price payable by such other customers has been reduced shall automatically be reduced to the price charged to such other customers. If no price is specified on the Order, the price shall be the lowest price at which the Items are sold by Seller. The prices specified on the Order are fixed and shall include all charges and expenses related to the sale of the Items to Purchaser and no additional charges shall be added to the amount due from Purchaser in connection with the sale of the Items including, but not limited to, surcharges, shipping, packaging, taxes and duties.

### C. Delivery

1. Time is of the essence.



2. The exact quantity of Items is to be delivered to Purchaser at the date and place specified on the Order or on Purchaser's release. When Seller is aware of any actual or potential conflict that delays or threatens to delay its performance of the Order, Seller shall notify Purchaser immediately of such delay or threatened delay and fully inform Purchaser of the reason or reasons for such conflict. Purchaser reserves the right without prejudice to other rights of Purchaser, to cancel the Order or any release issued pursuant to an Order, in each case without liability, if Seller fails to deliver the Items, or if Purchaser has reason to believe that Seller may fail to deliver the Items, within the time and to the place specified on the Order or on Purchaser's release.
3. If the exact quantity of Items are not delivered to Purchaser at the date and place set forth on the Order or on Purchaser's release, Purchaser, at its discretion, may: (a) accept the delivered quantities and modify the following orders or releases due to differences and, if quantities delivered are in excess of what was ordered, store excess Items at Seller's expense; or (b) reject the exceeding quantities and return them at the risk and expense of Seller; or (c) request that Seller deliver any lacking quantities at its expense; or (d) terminate the Order. Seller is responsible for all additional costs of any resulting expedited or other special transportation which may be required by Purchaser.
4. Purchaser may from time to time, by release or other written notice to Seller, make reasonable changes to the drawings, specifications, materials, packaging, testing, quantity, time or method of delivery or shipment, or other requirements of Purchaser with respect to the Items and Seller shall make the changes required by Purchaser without any change in the price payable by Purchaser with respect to such Items. If the changes proposed by Purchaser are material, upon Seller's written request delivered to Purchaser no later than three (3) business days following Seller's receipt of a request for a change, which written request shall be supported with appropriate documentation, the parties may discuss an equitable adjustment to prices and times for performance necessitated by Purchaser's requested changes. No increase in the price payable for Items or the time for delivery of Items shall be effective unless in writing signed by Purchaser's authorized representative.
5. Upon request of Purchaser, Seller shall keep at its own facilities security stocks of Items in order to ensure the fulfillment of Purchaser's future Orders or releases, as the case may be. If used, such security stocks shall be promptly restored.

#### **D. Title and Risk of Loss**



1. Title Warranty: Seller warrants that it has good title to the Items, free and clear of all liens and encumbrances, and will transfer such title to Purchaser. Seller affirmatively waives any liens, whether based on statute or common law, that Seller might otherwise have on any Items.

2. Title and Risk of Loss: Title and risk of loss to the Items shall remain with Seller until the Items have been delivered to and accepted by Purchaser or its authorized agent or consignee at the location specified on the Order, unless otherwise specified on the Order. If Purchaser rejects or refuses to accept tender or delivery of any Items, where the Items tendered or delivered fail to conform to specifications or the terms hereof or where the quantity of Items delivered is in excess of the quantity specified on the Order or release, then title and risk of loss with respect to the Items shall remain with the Seller until Seller cures any defects in the specifications, quantity or other nonconformities of the Items tendered or delivered or until Purchaser accepts in writing such nonconforming Items.

### **E. Shipment, Marking, Packing**

Items shall be shipped FCA Seller's facility unless otherwise specified on the Order. Freight terms shall be governed by Incoterms (2010) on a case by case basis. All shipments shall be properly packed, marked and shipped in accordance with the requirements of Purchaser and the common carrier and in a manner which shall permit securing the lowest transportation rates. Any materials designated by law or regulation as hazardous must be marked accordingly. Seller shall reimburse Purchaser for all expenses incurred by Purchaser as a result of improper packing, marking or routing. If it is necessary for Seller to ship by a more expensive means in order to comply with a required delivery date, such cost shall be paid by Seller.

### **F. Acceptance: Additional or Different Terms**

The first to occur of Seller's (i) failure to object in writing, within two business days of receipt, to these Global Terms or the terms on the Order, (ii) commencement of work on the Items, (iii) shipment of the Items or (iv) Seller's acceptance by its signature of these Global Terms (or any Order incorporating these Global Terms), shall be deemed acceptance of the Order and these Global Terms. Any acceptance of the Order is limited to acceptance of the express terms contained on the Order and these Global Terms, the applicable Country Specific Addendum and the Additional Purchase Order Terms and Conditions, as defined herein. Seller acknowledges that a request for quotation issued by Purchaser and a quotation issued by Seller are not offers. Any and all terms on Seller's quotation or any other form of communication or documentation provided by Seller or any attempt by Seller to vary any of the terms of the Order in any manner shall be deemed material, are objected to and rejected by Purchaser, and shall not become part of the Order and shall not be binding without Purchaser's written consent.



## **G. Warranty by Seller, Indemnification, Insurance and Infringement**

1. **Warranty by Seller:** Seller warrants all Items delivered hereunder to be (a) free from defects in material and workmanship, (b) to be of good and merchantable quality, (c) to conform strictly to all specifications, drawings, or samples which may have been provided to or furnished by Purchaser, (d) to fit the purpose for which the Items are intended and capable of the performance necessary for the safe and proper function of the final products to which they are incorporated and (e) comply with applicable law. If the samples, drawings, specifications or changes thereto are furnished by Seller, then Seller warrants that the Items are free from defects in design. This warranty is in addition to all warranties provided by law. Seller's warranty shall extend to Purchaser, its successors, assigns, customers and users of Items. The warranty period is the longest of: four years from the date Purchaser accepts the Items, the warranty period provided by applicable law, or the warranty period offered by Purchaser or its customers to end-users for the products into which the Items are incorporated.

2. **Indemnification:** Seller shall indemnify and hold Purchaser, its agents, servants, consignees, employees, directors, officers, shareholders, licensees, and their customers, representatives, and end users (each a "Purchaser Indemnified Party") harmless from and against all expenses (including actual attorney's fees and expenses), losses, liabilities and damages (including special, incidental, consequential, punitive and exemplary damages) of any kind or nature (individually and collectively "Damages") arising in connection with, based upon, related to or resulting from claims, demands, actions, causes of action, suits, proceedings or charges of whatever kind or nature (individually and collectively "Claims") in connection with the Items, the Order or any other matter contemplated by these terms including but not limited to, Claims arising in connection with, based on, related to or resulting from (i) any tort (including negligence), personal or bodily injury, death, damage to private or public property, willful carelessness, an intentional act or omission, a defect, breach of express or implied warranty, failure to warn or strict liability arising in any manner from any application or use of the Items, (ii) Seller's failure to deliver the Items within the time required by the Order and (iii) any failure of the Items to comply with all terms and conditions of the Order. Seller shall assume the defense of any Claim immediately upon receipt of a written notice from a Purchaser Indemnified Party of any such Claim and request by a Purchaser Indemnified Party for indemnification. The Purchaser Indemnified Parties may engage their own counsel, at Seller's expense, to participate in the defense of any such Claim and, if such Claim involves a request for remedy other than the payment of monetary damages, then Purchaser may assume control of the defense of such Claim without relieving Seller of its obligation to provide indemnification. Seller must not settle any Claim without first obtaining Purchaser's written consent to such settlement.

3. **Insurance:** If requested by Purchaser, Seller shall maintain policies of liability insurance, declaring Purchaser as an additional named insured, in such amounts as Purchaser shall



designate, to protect Purchaser. Such policies of insurance shall not be cancellable except upon ten days advance written notice to Purchaser. Seller shall furnish proof of such insurance to Purchaser. Prior to commencing work on Purchaser's premises or utilizing Purchaser's property (including Purchaser's Property as defined below) and at all relevant times, Seller must maintain and upon request furnish to Purchaser a certificate evidencing: (a) general liability insurance with coverage limits reasonably acceptable to Purchaser and naming Purchaser as an additional insured; (b) all risk property perils insurance covering the full replacement value of Purchaser's property while in Seller's care, custody, or control and naming Purchaser as loss payee; and (c) worker's compensation insurance as required by applicable law.

4. Indemnity Against Infringement: If Seller furnishes, owns or is otherwise responsible for any part of the design at issue, Seller shall indemnify and hold the Purchaser Indemnified Parties harmless from any and all Damages arising in connection with, based on, related to or resulting from Claims for wrongful appropriation of any trade secret or infringement of any patent, copyright, trademark or trade name or service mark by reason of the manufacture, use, or sale of the Items by Seller or Purchaser (any such Claim being referred to hereafter as an "Infringement Claim"). Seller shall, immediately upon receipt from a Purchaser Indemnified Party of written notice of any such Infringement Claim, appear in and assume the defense of the Infringement Claim if the Purchaser Indemnified Party shall so request. The Purchaser Indemnified Parties may engage their own counsel, at Seller's expense, to participate in the defense of any such Infringement Claim and, if such Claim involves a request for remedy other than the payment of monetary damages, then Purchaser may assume control of the defense of such Claim without relieving Seller of its obligation to provide indemnification. Seller must not settle any Claim without first obtaining Purchaser's written consent to such settlement.

## **H. Termination of Purchase Order and Remedies of Purchaser**

1. Termination at Option of Purchaser: Effective immediately upon delivering written or electronic notice, Purchaser shall have the right to terminate the Order, in whole or in part at any time following the occurrence of any of the following events to or by Seller: (a) failure to comply with all required laws, regulations or orders; (b) failure to use properly skilled personnel; (c) failure to comply with any of its obligations under the Order or any release issued pursuant to an Order; (d) in the event of the insolvency of Seller or the occurrence of any actions indicating insolvency (such as a petition by or against Seller under any chapter of United States bankruptcy or other country's equivalent laws, the appointment of a receiver for all or part of Seller's property or an attempt by Seller to make a general assignment for the benefit of creditors); or (e) there are substantial changes in the ownership/shareholder status of Seller's business. Purchaser also reserves the right to terminate the Order, in whole or in part, at Purchaser's sole convenience upon providing 30 days' notice (written or electronic).



2. Purchaser's Rights and Remedies: Upon any termination of the Order in accordance with Section H (1) above, Seller shall immediately stop all work and observe any instructions from Purchaser as to work in process, raw materials, equipment and tooling and Purchaser may immediately exercise all of its rights with respect to Purchaser's Property and Seller's Property as provided in Section K below. In the event the Order is terminated for any reason described in Section H(1)(a), (b), (c), (d) or (e) above, Purchaser may take possession of the Items related to the Order, in whatever state of completion they may be, contract with or employ any other person or persons to finish the Items, and collect from Seller any and all Damages which Purchaser may suffer as a result of the termination of the Order. In the event that the Order is terminated by Purchaser at Purchaser's sole convenience, unless otherwise agreed by Seller and Purchaser, Purchaser shall pay to Seller the following amounts, without duplication: (w) the then-prevailing purchase price for all Items that have been completed and delivered in conformance with the Order and not previously paid for; and (x) the actual and reasonable costs of work-in-process and raw materials incurred by Seller less the sum of the reasonable value or costs (whichever is higher) of any goods or materials used or sold by Seller with Purchaser's written consent. Purchaser will make no payment for finished goods, work-in- process or raw materials fabricated or procured by Seller in amounts in excess of those authorized for delivery in a firm release prior to termination nor for any undelivered Items that are in Seller's standard stock or that are readily marketable. Seller shall submit its request for payments under this paragraph, with supporting documentation, within 60 days after the effective termination date. Purchaser shall have the right to audit the relevant books and records, facilities, work, material, inventories and other items relating to Seller's request.

3. Remedies Non-exclusive: Any rights or remedies granted to Purchaser in any part of the Order shall not be exclusive of, but shall be in addition to, any other rights or remedies granted in any other part of the Order or that Purchaser may have at law or in equity.

## **I. Purchaser Specifications: Changes or Modifications**

1. Material Safety Data Sheets: Purchaser is relying upon material safety data sheets furnished by Seller, and Seller shall indemnify the Purchaser Indemnified Parties for any Damages arising out of Seller's failure to provide full, complete and accurate information in the material safety data sheets. Seller shall assume the defense of any Claim arising out of Seller's failure to comply with this section immediately upon receipt of a written notice from a Purchaser Indemnified Party and request by a Purchaser Indemnified Party for indemnification. The Purchaser Indemnified Parties may engage their own counsel, at Seller's expense, to participate in the defense of any such Claim and, if such Claim involves a request for remedy other than the payment of monetary damages, then Purchaser may assume control of the defense of such Claim without relieving Seller of its obligation to provide indemnification. Seller must not settle any Claim without first obtaining Purchaser's written consent to such settlement.





2. Purchaser Specifications: All specifications, drawings, designs, samples, notes, instructions, engineering notices, or technical data of Purchaser furnished to Seller or referred to in the Order shall be deemed to be incorporated herein by reference the same as if fully set forth herein. Purchaser shall at all times retain title to all such documents, data and samples. Seller shall not disclose the contents of any such documents, data and samples to any person other than those duly authorized by Purchaser. Upon Purchaser's request, Seller shall promptly return to Purchaser all such documents, data and samples and copies thereof. Seller agrees not to sell Items made to Purchaser's specifications to any other person, firm or company except with Purchaser's prior written consent.

3. Changes: Purchaser shall have the right to make changes (including additions and deletions) from time to time in the Items, the specifications, drawings, designs, packing instructions, or shipping destination or to postpone the delivery. Any adjustments in price and/or other terms of the Order necessitated by such changes must be agreed to in writing by Purchaser.

#### **J. Additional Purchase Order Terms and Conditions on Purchaser's Website**

All of the terms and conditions applicable to the Order are available on Purchaser's website at [www.daycosupplier.com](http://www.daycosupplier.com). The website sets forth terms and conditions in addition to those set forth above within the document titled "Supplier Performance Requirements Manual" (referred to herein as the "Additional Purchase Order Terms and Conditions"). The parties hereby agree that the Additional Purchase Order Terms and Conditions are expressly incorporated into the Order and are made a part thereof. The Additional Purchase Order Terms and Conditions shall have the same force and effect as the other terms and conditions set forth herein. If Seller is unable to access Purchaser's website to read the "Supplier Performance Requirements Manual," Seller shall notify Purchaser prior to accepting the Order and Seller will be provided with a paper copy of the "Supplier Performance Requirements Manual." By accepting the Order, the Seller hereby confirms that the Seller has read the "Supplier Performance Requirements Manual" and must comply with the same.

#### **K. Ownership of Tooling, Bailed Property**

##### 1. Purchaser's Property:

(a) Purchaser owns all tooling, jigs, dies, gauges, fixtures, molds, patterns, supplies, materials and other equipment and property used by Seller to manufacture, store and transport Items ("Property") if: (1) the Property is so designated in the Order; or (2) Purchaser or its customer has provided or paid for the Property ("Purchaser's Property"). Seller must assign to Purchaser all contract rights or claims in which Seller has an interest with respect to Purchaser's Property



and execute bills of sale, financing statements or other documents reasonably requested by Purchaser to evidence its or its customer's ownership of Purchaser's Property. Seller must indemnify, defend and hold Purchaser and Purchaser's customer harmless from and against all Claims or liens adverse to Purchaser's or its customer's ownership of Purchaser's Property (except those that result from the acts or omissions of Purchaser or its customer) and any Damages that arise from such Claims or liens. If instructed by Purchaser, Seller shall assume the defense of any such claim or lien immediately upon receipt of a written notice from Purchaser and request by Purchaser for indemnification. Seller must not settle any Claim without first obtaining Purchaser's written consent to such settlement. Purchaser may engage its own counsel, at Seller's expense, to participate in the defense of any such Claim or lien. Even if Purchaser retains control of, or participates in, the defense of any Claim, Seller is not relieved of its obligation to provide indemnification. Seller holds Purchaser's Property on a bailment basis and is responsible for loss or damage to Purchaser's Property while in its possession or control. To the extent permitted by law, Seller affirmatively waives any lien or similar right, whether based in statute or common law, it may have with respect to Purchaser's Property. Purchaser is responsible for personal property taxes assessed against Purchaser's Property.

(b) Seller must: (1) at its expense maintain Purchaser's Property in good condition and repair, normal wear and tear excepted, throughout the useful life of Purchaser's Property; (2) use Purchaser's Property only for the manufacture, storage and transport of Items unless Purchaser otherwise approves in writing; (3) at Purchaser's request and expense, mark Purchaser's Property as belonging to Purchaser or its customer; and (4) not remove Purchaser's Property from Seller's premises without Purchaser's written approval. All replacement parts, additions, improvements, and accessories to Purchaser's Property will become part of Purchaser's Property.

(c) Purchaser will pay for Purchaser's Property that it is required to purchase at the lesser of: (1) the amount specified in the Order; or (2) Seller's actual cost of the Purchaser's Property, if manufactured by a third party; or (3) Seller's actual cost of purchased materials, components and services plus Seller's actual cost of labor and overhead allocable to the Purchaser's Property, if manufactured by Seller. Unless otherwise stated in the Order, final payment for Purchaser's Property is due on the vehicle manufacturer's PPAP (Production Part Approval Process) approval date.

(d) Seller must immediately return Purchaser's Property to Purchaser upon request, and Purchaser may retake immediate possession of Purchaser's Property and other property of Purchaser or its customers at any time, with or without cause and without payment of any kind unless otherwise provided herein. As requested by Purchaser and at Purchaser's expense, Seller must either: (1) release the requested Property and other property to Purchaser F.C.A. Seller's plant (Incoterms 2010), properly packed and marked in accordance with the requirements of Purchaser's carrier; or (2) deliver the requested Property and other property to a location designated by Purchaser. If the return or recovery of Purchaser's Property or other property





renders Seller unable to produce an Item, the return or recovery will be deemed a termination of the Order with respect to that Item pursuant to Section H hereof.

2. Seller's Property: Seller owns all Property that is not Purchaser's Property and is paid for by Seller ("Seller's Property"). Seller must at its expense furnish, maintain in good condition, and replace when necessary Seller's Property needed to perform the Order. While the Order covering the Items remains in effect, Purchaser shall have an irrevocable option to purchase Seller's Property used to produce the Items, if no longer needed by Seller to produce Items or products for other customers, for a purchase price equal to the greater of fair market value or Seller's unamortized acquisition cost.

### **L. Quality, Inspection and Non-Conforming Items**

All Items covered by the Order shall be properly marked according to applicable law or regulation and are subject to Purchaser's right to inspect and reject such Items. Delivery and payment do not limit Supplier's responsibility for the quality and serviceability of the Items. Payment for non-conforming Items shall not constitute an acceptance, or impair, limit or otherwise restrict Purchaser's right to claim any legal or equitable right, nor shall it relieve Seller of any responsibility or liability for defects or breach of warranty that are discovered after delivery, payment or acceptance. Items shall be tested for compliance with specifications and these Global Terms in accordance with procedures indicated in the Order, these Global Terms, or any other procedure chosen by Purchaser and communicated to Seller. Seller shall keep appropriate records of trials and tests performed on the Items and of the checks performed on tools and equipment used for production and tests, for the time agreed with the Purchaser and in any case for a minimum period of ten (10) years. Purchaser shall have the right to enter Seller's facilities, at reasonable times, to inspect and test the quality of the Items ordered hereunder, raw materials and manufacturing and testing procedures and review and audit all records relative to Seller's performance of the Order. Any such testing, inspection, review or audit shall not relieve Seller of any responsibility or liability hereunder. Items furnished hereunder may be rejected by Purchaser at any time for defects or defaults revealed by inspection, analysis, or by manufacturing operations or use after delivery even though such Items may have previously been inspected and accepted. Purchaser shall have the right, at Purchaser's option, to return such rejected Items to Seller at Seller's risk and expense (including transportation and handling costs), or to require, at Seller's expense, the correction or replacement of the Items. Seller must comply with the quality control and inspection standards and systems established or directed by Purchaser and shall be QS-9000 and/or ISO 9000-2000 and/or ISO/TS 16949 certified throughout the period of time required to complete delivery of all Items required to be delivered pursuant to the Order. In the event that Purchaser elects to return any Items that are rejected for defects or defaults, non-conforming Items will be held by Purchaser for disposition in accordance with Seller's instructions, at Seller's cost, for three (3) days after notification of



rejection, or such shorter period as may be commercially reasonable under the circumstances. If Seller fails to provide timely disposition instructions, Purchaser may either dispose of the non-conforming Items or charge Seller for storage and handling without liability. Additional quality requirements criteria can be found in the “Supplier Performance Requirements Manual” at [www.daycosupplier.com](http://www.daycosupplier.com).

## **M. Recalls**

This section applies to any voluntary or government-mandated offer by Purchaser (or the vehicle manufacturer) to vehicle purchasers to remedy an alleged defect that affects motor vehicle safety or to address an alleged failure of a vehicle to comply with an applicable motor vehicle safety standard or guideline (a “Recall”). Except as otherwise stated in the Order, Seller’s liability for costs and damages from a Recall resulting in whole or in part from a failure of the Items to conform to the warranties in section G hereof will be determined on a case-by-case basis, based upon: (a) a good faith allocation of responsibility for the Recall; (b) the reasonableness of the costs and damages incurred; (c) the quantity purchased and the price of the affected Items; and (d) other relevant factors.

## **N. Intellectual Property and Confidential Information**

1. Purchaser remains the owner of all designs, discoveries, creations, works, devices, masks, work in progress, deliverables, inventions, products, computer programs, procedures, improvements, developments, drawings, notes, business processes, models, patterns, tools, dies, jigs, gauges and specifications or other documents, information, materials or other things that Purchaser provides to Seller (“Purchaser’s Work Product and Intellectual Property Rights”). In the event that the parties agreement with respect to an Item is canceled or terminated for any reason, Seller grants to Purchaser a non-exclusive, royalty-free and irrevocable, license to use any and all of Seller’s work product and intellectual property rights that it may have with respect to an Item (“Seller’s Work Product and Intellectual Property Rights”) to obtain from an alternate source, products and services that are the same or similar to the Item for use in vehicles or component parts.

2. Seller’s Work Product and Intellectual Property Rights include but is not limited to all designs, discoveries, creations, works, devices, masks, models, work in progress, deliverables, inventions, products, computer programs, procedures, improvements, developments, drawings, notes, documents, business processes, information and materials made, conceived or developed by Seller alone or with others, including Purchaser, which result from or relate to the Items. Purchaser has the sole right to determine the treatment of any of Purchaser’s Work Product and Intellectual Property Rights, including the right to keep it as trade secret, execute and file patent



applications on it, to use and disclose it without prior patent application, to file registrations for copyright or trademark in its own name or to follow any other procedure that Purchaser deems appropriate. Seller agrees: (a) to disclose promptly in writing to Purchaser all Seller's Work Product and Intellectual Property Rights in its possession; (b) to assist Purchaser in every reasonable way, at Purchaser's expense, to secure, perfect, register, apply for, maintain, and defend for Purchaser's benefit all copyrights, patent rights, mask work rights, trade secret rights, and all other proprietary rights or statutory protections in and to Purchaser's Work Product and Intellectual Property Rights as Purchaser deems appropriate; and (c) to otherwise treat all Work Product and Intellectual Property Rights of Purchaser as confidential and proprietary information. These obligations to disclose, assist, execute and keep confidential survive the expiration or termination of the Order.

3. Seller hereby grants to Purchaser a nonexclusive, royalty-free, irrevocable license to use, repair, rebuild, install, maintain and relocate the Items.

4. Purchaser's Work Product and Intellectual Property Rights, trade secrets, specifications, drawings, notes, instructions, engineering data and analyses, compositions of matter, financial data, and other technical and business data which is supplied or disclosed by Purchaser in connection with an Item or agreement ("Confidential Information") is deemed confidential and proprietary to Purchaser, unless otherwise stated in the Order or expressly agreed to by Seller and Purchaser and remains the sole property of Purchaser. For the duration of this agreement and for five years following its expiration or termination, which ever happens first, Seller must not disclose Confidential Information to anyone other than personnel having a need to know or use Confidential Information for any purpose other than as contemplated by the Order without, in each case, the prior written consent of Purchaser. Confidential Information does not include information that: (a) is or becomes generally available to the public other than as a result of a violation of this Section N by Seller; (b) was obtained by Seller on a non-confidential basis from a third party who had the right to disclose it without violating any confidentiality or fiduciary obligation; or (c) Seller is legally required to disclose in the written opinion of Seller's outside counsel (a copy of which shall be given to Purchaser). However, if Seller receives a demand to produce Confidential Information, if not prohibited by law from doing so, it must immediately inform Purchaser upon receiving such demand so that Purchaser can object to disclosure or seek an appropriate protective order or other appropriate remedies to protect the confidentiality of the Confidential Information. Seller must use at least the same degree of care (but not less than a reasonable degree of care) to safeguard Confidential Information that it uses to protect its own confidential information from unauthorized access or disclosure. Upon request by Purchaser, Seller must promptly return or destroy the original and all copies of Confidential Information received.

## **O. Compliance with Laws: Equal Employment: Licenses**



1. Compliance: Seller warrants that the Items and their production or completion shall not violate or cause Purchaser to be in violation of any rights of third parties or of any laws, rules, regulations or orders applicable in the countries in which the Items are manufactured and to which they are destined. Seller represents and warrants that Seller, Seller's employees, Seller's representatives and Seller's subcontractors will not make any payments or provide any benefit to a Government Official to induce such Government Official to make any governmental act or decision to help Purchaser or the Items and will not make a payment or offer any item or benefit, regardless of value, as an improper inducement for such Government Official to facilitate or approve any proposal and project related to Purchaser or the Items, or otherwise improperly to benefit Purchaser's business activities or the Items. Purchaser is entitled to terminate this Contract immediately if Seller, on behalf of Purchaser or any other company, has made or is making any improper payment or benefit to a government official. Seller is obligated to bear all the damage and loss incurred in such event. Seller agrees to indemnify and hold harmless the Purchaser Indemnified Parties against any Damages arising out of Claims against Seller or Purchaser due to such improper payment or benefit.

2. Licenses: Seller shall be required to obtain and pay for any licenses, permits, and inspections by public bodies required in connection with the manufacture, construction, sale and delivery of the Items; in all cases in strict compliance with all applicable anti-corruption laws.

## **P. Force Majeure**

Except as set forth herein, neither party shall be liable for failure to perform or delay in performance hereunder if such failure or delay is due to fire, storm, flood, war, embargo, or any act of God or other cause or contingency beyond such party's reasonable control; provided that, if any act or event described in this Section prevents or may prevent Seller from performing its obligations, Purchaser shall have the right, without obligation or liability to Seller, to purchase Items from another supplier. Under such circumstances, Seller shall reimburse Purchaser for any amount paid in excess of the amount that Purchaser would have paid to Seller for such Item and the delivery of such Item at the date and place specified on the Order or in Purchaser's release. Seller must use diligent efforts to ensure that the effects of any force majeure are minimized and, as promptly as possible, to resume full performance under the Order. If requested by Purchaser in writing, Seller must, within 5 days after Purchaser's request, provide adequate assurances that the delay in Seller's performance resulting from such event will not exceed 30 days. If the delay lasts more than 30 days or Seller does not provide such adequate assurances, Purchaser may immediately terminate the Order without any liability to Seller.

## **Q. Assignment and Subcontracting**



Seller must not assign the Order or any right hereunder without the prior written consent of Purchaser and any assignment made in violation of this Section is null and void. Purchaser may assign its rights and obligations under the Order to its affiliates or subsidiaries, or to any corporation into which it shall be merged, consolidated, or by which all or substantially all of its assets shall be acquired.

## **R. Audit Rights**

Seller must maintain records as necessary to support all amounts charged to Purchaser. Purchaser and its representatives may audit Seller's records of transactions completed within one year prior to the audit date, to the extent needed to verify the quantities shipped and that the prices charged match the agreed-upon prices. Any audit will be conducted at Purchaser's expense (but must be reimbursed by Seller if the audit uncovers material errors in the amounts charged), at reasonable times, and at Seller's usual place of business.

## **S. Advertising**

During and after the term of the Order, Seller must not advertise or otherwise disclose its relationship with Purchaser or Purchaser's customers without Purchaser's prior written consent, except as may be required to perform under the Order or as required by law.

## **T. Entire Agreement, Severability, Governing Law**

1. Entire Agreement: The Order and the documents referred to on the face of the Order, including but not limited to these Global Terms and the Additional Purchase Order Terms and Conditions and Country Specific Addendums, as defined herein and set forth on Purchaser's website at [www.daycosupplier.com](http://www.daycosupplier.com), shall be deemed to contain the entire agreement between Purchaser and Seller and to constitute the complete and exclusive expression of the terms of the Order. All prior or contemporaneous written or oral agreements or negotiations between the Purchaser and the Seller with respect to the purchase of the Items provided for by the Order are superseded by the terms and conditions of the Order and the documents referred to on the face of the Order.

2. Severability: In the event that any word, phrase, clause, sentence, or other provision hereof shall violate any applicable statutes, ordinance, or rule of law in any jurisdiction in which it is used, such provision shall be ineffective to the extent of such violation without invalidating any other provision hereof.



3. Governing Law: The rights and obligations of the parties hereto shall not be governed by the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods or the related Convention on the Limitation Period in the International Sale of Goods; rather these rights and obligations shall be governed by and interpreted in accordance with the laws of the State of Michigan without giving any effect to any conflict- of-laws provisions of the laws of the State of Michigan that would require application of another choice of law. Any action hereunder shall be subject to the exclusive jurisdiction of the Oakland County Circuit Court or the United States District Court for the Eastern District of Michigan

#### **U. Limitation on Purchaser's Liability-Statute of Limitations**

Under no circumstances shall Purchaser be directly or indirectly liable to or indemnify Seller for anticipated profits or for reliance, special, incidental, consequential or exemplary damages or attorney fees claimed by Seller or claimed by a third party against Seller including but not limited to loss of anticipated profits, unabsorbed overhead, interest, product development or engineering costs, investment, facilities and equipment costs or rental, unrecovered depreciation costs, general administrative burden charges or for payments owed by seller to its subcontractors. Purchaser's sole liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from the Order or from the performance or breach hereof shall in no event exceed the sum of a.) the price allocable to the Item thereof, which gives rise to the claim; b.) the then-prevailing purchase price for all Items that have been completed and delivered in conformance with the Order and not previously paid for; and c.) the actual and reasonable costs of work-in-process and raw materials incurred by Seller less the sum of the reasonable value or costs (whichever is higher) of any goods or materials used or sold by Seller with Purchaser's written consent. However, Purchaser will make no payment for finished goods, work-in-process or raw materials fabricated or procured by Seller in amounts in excess of those authorized for delivery in a firm release or for any undelivered Items that are in Seller's standard stock or that are readily marketable. Purchaser shall not be liable for penalties of any description. Any action resulting from any breach or wrongdoing on the part of Purchaser must be commenced within one year after the cause of action has accrued.

#### **V. Electronic Communication**

Seller must comply with the method of electronic communication specified by Purchaser in Purchaser's request for quotation and confirmed in the Order, including requirements for electronic funds transfer, purchase order transmission, electronic signature and communication. Seller must also comply with any modification to Purchaser's specified method of electronic communication after the date of the Order, subject to section I hereof.





## **W. Past-Model Service Requirements**

Seller must make Items available to Purchaser for Purchaser's past-model service requirements for a period of 15 years after Purchaser completes current-model purchases of those Items from Seller. The parties must negotiate in good faith the prices, quantities and delivery terms for past-model service Items based on the availability and cost of needed materials, supplies, and skilled workers, the additional costs for equipment setup, packaging, and the like, and other relevant factors.

## **X. Setoff**

All claims for money due or to become due from Purchaser shall be subject to deduction or setoff by the Purchaser by reason of any counterclaim arising out of this or any other transaction with Seller. If, within 15 days of receiving notice of setoff, Seller does not provide written objection, Seller is deemed to have accepted the setoff.

## **Y. Labor Contracts**

At least six months before the expiration of a current labor contract that has not been extended or replaced, Seller must notify Purchaser of such contract expiration date. Purchaser may thereafter direct Seller in writing to manufacture up to 30 days of additional inventory of Items, specifying the quantities of Items required and any packaging and storage requirements. Seller must use commercially reasonable efforts to comply with Purchaser's written directions prior to expiration of the current labor contract and until the current labor contract has been extended or a new contract completed. By authorizing the additional inventory, Purchaser commits to buy the entire quantity of conforming Items requested and produced. Seller is responsible for carrying costs and any additional costs of manufacture.

## **Z. Waiver**

No waiver of any breach or of any provision of these Global Terms shall be effective against the Purchaser unless agreed to in writing by the Purchaser and no such waiver of breach or provision constitutes a waiver of any other breach or other provision. These Global Terms may be modified only in writing signed by an authorized representative of Purchaser.

